

**Montana State Legislature**

My name is Kevin Kelleher. I am a thirty-four (34) year resident of the Gallatin Canyon and have home on the Gallatin River near Big Sky at the historic Karst Kamp. I am one of only three deed holders to my property in the past 108 years. The land I own was part of the Karst Ranch homesteaded by Pete Karst.

I helped to write the GALLATIN CANYON/BIG SKY PLANNING AND ZONING DISTRICT land use ordinances and served on the ADVISORY BOARD for more than fourteen (14) years. It was my specific intention to protect my neighbors' rights along the very sparsely developed Gallatin Canyon portion of the Gallatin River since many of these properties are squeezed between the river and US HWY 191, most having been built in the early 1900's. Contrary to what some believe, only three percent (3%) of the land in the Gallatin Canyon from mile post 31 at the Park (YNP) to mile post 70 at the mouth of the canyon is privately owned. The stretch of river that I live on has homes on only about two (2) miles of river. Upstream from our homes is seven (7) miles of USFS land and downstream from our homes is over ten (10) miles of USFS land.

I currently serve on the Gallatin Airport Authority Board, am the former publisher of the Big Sky newspaper LONE PEAK LOOKOUT, and am a member of the Montana Association of Realtors, Gallatin Association of Realtors, and Montana Pilots Association.

I have raised my family at this location and enjoyed the many wonders of riverfront living for years and hope to enjoy them for many more. I am here today to voice my opposition to House Bill #455 as introduced, also known as the Big Sky Rivers Act.

I am opposed to unilateral, one law fits all, top down zoning for Montana rivers. Each river selected for implementation of this act has significant differences, ranging from topography to settlement. These rivers were some of the first areas settled in the Montana Territory. It is my belief that zoning along these rivers is best handled locally.

1. SUPERCEDE: You also read this term in the body of HB #455, but, in truth, in my planning and zoning district and also in most of Gallatin County, this new law HB #455 WOULD trump our local regulations as what the bill refers to as "POLITICAL SUBDIVISION". Our local ordinance specifically calls for whatever law, covenant, owners association, or zoning regulation which is MOST STRINGENT to apply... this bill implies we LOSE local jurisdiction!
2. SETBACKS- Our local zoning ordinance calls for the following setbacks as established by the passing of the Gallatin Canyon/Big Sky Planning and Zoning District in July 1996;
  - a. Currently platted tracts of land on the West Gallatin River 50 feet
  - b. Any new tract of land filed after July 30, 1996 100 feet
  - c. 100-year or 500-year flood plain setbacks often push the homes back even more than these requirements
  - d. Lack of an adequate site for a sanitary waste water system also precludes development on some riverfront property since holding tanks are not allowed, and a central waste water system does not exist in some areas of the Gallatin Canyon.
3. I am opposed to the rebuilding timetable set by this bill

*In section 6, line (2), of the proposed bill, letter ii: (ii) reads; "the reconstruction or repair of any building destroyed or damaged by accidental causes OTHER THAN*

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*FLOODING if: (A) the original perimeter of the building is not exceeded; and (B) the reconstruction or repairs commenced within 2 years of the date of destruction;*

The timetable implication of this part of the bill is a "TAKING" due to some unforeseen circumstances like probate, legal, ownership, right of survivorship, inheritance, money and a myriad of other issues. The property may not be able to be rebuilt in the specific time frame outlined in the bill. There should be absolutely NO timetable with regard to rebuilding or selling the property to another person. The state does not take away rights by establishing timeframes to rebuild farms, city houses, commercial buildings, or other properties. Consequently, I view this part of the bill as discriminatory against riverfront landowners.

I also take umbrage with the issue of NOT allowing a rebuild because of flooding. Our local zoning ordinance for my portion of the Gallatin River specifically allows for a rebuild under loss of the property by ANY cause. The subject property must be the same footprint but there is NO TIMETABLE set to rebuild.

4. The proposed act specifically calls for a Streamside Management Area and a Vegetated Buffer. If we land owners didn't take it upon ourselves to mow down the spotted knapweed, ox eye, Canadian thistle, and other noxious weeds brought onto our lands by recreationists and anglers, who would do it? Since some environmental groups oppose pesticides near the rivers, mowing is the next best option. Vegetated buffers would become hedgerows of Spotted Knapweed. I am opposed to the 150-foot Vegetated Buffer which will encourage the spread of these noxious weeds.
5. I am opposed to the 250-foot Streamside Management area which will simply be considered an extension of the recreationists' and anglers high water mark, encouraging the incursion of private property thus harming the owners' rights of peaceful enjoyment of their private property.
6. Building of non-habitation structures in the flood plain, such as barns, outbuildings, service roads and even private airstrips should be permitted uses on some of these rivers just as they are in other western states.
7. VARIANCES: You will hear a lot about 'variances' and that all property owners have the right of appeal but what the bill writers didn't tell you is that seldom are variances approved, especially on water. I have personal experience and proof of this which I am willing to share with you if requested. It is also the responsibility of the landowner to pay for all costs of the variance which can amount to tens of thousands of dollars and years of hearings. Too often this word 'variance' is used to disguise the motives of the bill writers...they are well aware of the pain and litigation this process can involve.

Changing of county commissioners, local zoning board members, and other ongoing change in processes only complicate the variance process. It's not the way to go. Variance processes are no guarantee that you will get what you may need for your property due to changes in the law.

I would be happy to answer any questions to might have regarding the Gallatin River near Big Sky. I am in favor of local and county driven zoning efforts similar to the GALLATIN CANYON /BIG SKY PLANNING & ZONING DISTRICT.

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